

STATE OF CALIFORNIA  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

**PERMIT FOR DIVERSION AND USE OF WATER**

**PERMIT 21173**

Application **28220** of **Michael and Grace Jacobs Family Trust**  
**P.O. Box 508**  
**Pescadero, CA 94060**

filed on **August 15, 1984**, has been approved by the State Water Resources Control Board (State Water Board)  
SUBJECT TO PRIOR RIGHTS and to the limitations and conditions of this permit.

**Permittee is hereby authorized to divert and use water as follows:**

1. Source of water

Source:

**Shaw Gulch**

Tributary to:

**Bradley Creek thence**

**Pescadero Creek thence**

**Pacific Ocean**

within the County of **San Mateo**.

2. Location of point of diversion

By California Coordinate System of 1927 in Zone 3	40-acre subdivision of public land survey or projection thereof	Section	Township	Range	Base and Meridian
<b>North 288,750 feet and East 1,456,250 feet</b>	<b>NE¼ of SW¼</b>	<b>35</b>	<b>7S</b>	<b>5W</b>	<b>MD</b>

3. Purpose of use	4. Place of use	Section	Township	Range	Base and Meridian	Acres
<b>Fire Protection</b>						
<b>Recreation</b>	<b>Reservoir within NE ¼ of SW ¼</b>	<b>35</b>	<b>7S</b>	<b>5W</b>	<b>MD</b>	
<b>Irrigation</b>	<b>NW ¼ of SW ¼</b>	<b>35</b>	<b>7S</b>	<b>5W</b>	<b>MD</b>	<b>33.4</b>
	<b>NE ¼ of SW ¼</b>	<b>35</b>	<b>7S</b>	<b>5W</b>	<b>MD</b>	<b>2.4</b>
	<b>SW ¼ of SW ¼</b>	<b>35</b>	<b>7S</b>	<b>5W</b>	<b>MD</b>	<b>5.7</b>
	<b>SW ¼ of NW ¼</b>	<b>35</b>	<b>7S</b>	<b>5W</b>	<b>MD</b>	<b>25.2</b>
	<b>NW ¼ of NW ¼</b>	<b>35</b>	<b>7S</b>	<b>5W</b>	<b>MD</b>	<b>11.6</b>
					<b>Total:</b>	<b>78.3</b>

The place of use is shown on map on file with the State Water Board.

5. **Quantity - Storage, single.** The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 18 acre-feet per annum to be collected from December 1 of each year to April 15 of the succeeding year.  
(0000005C)
6. **No Offseason Storage.** This permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose.  
(0000005I)
7. **Enlargement of Reservoir.** The capacity of the reservoir covered under this permit shall not exceed 18.0 acre-feet.  
(0000005N)
8. **Complete Construction and Use.** Construction work and complete application of the water to the authorized use shall be prosecuted with reasonable diligence and completed by December 31, 2015. The plans and specifications for construction of the dam and reservoir shall be prepared by a licensed Civil Engineer. The actual construction work shall be limited to the dry season and shall be carried out under the direct supervision of a licensed Civil Engineer.  
(0000009M)
9. **Other Agency Permits.** Prior to commencing construction of the reservoir, Permittee shall obtain all appropriate grading permits, coastal development permits and other permits required by the County of San Mateo.  
(0000203)
10. **Outlet Pipe - Dam not Built.** Permittee shall install and maintain an outlet pipe of adequate capacity in the dam as near as practicable to the bottom of the natural stream channel in order that water entering the reservoir which is not authorized for appropriation under this permit can be released. Before starting construction, permittee shall submit plans and specifications of the outlet pipe, or alternative facility, to the Chief of the Division of Water Rights (Division) for approval. Before storing water in the reservoir, Permittee shall furnish evidence which substantiates that the outlet pipe has been installed in the dam. Evidence shall include photographs showing completed works or certification by a registered Civil or Agricultural Engineer.  
(0050043A)
11. **Erosion Hazard.** To prevent an erosion hazard at or downstream of the reservoir, prior to commencing construction of the dam and reservoir, Permittee shall submit for approval by the Division Chief, an erosion control/revegetation plan and implementation schedule prepared by a licensed civil engineer. The plan shall conform to the requirements of San Mateo County and the Streambed Alteration Agreement issued by the California Department of Fish and Game (DFG). Before storing water in the reservoir, Permittee shall furnish evidence which substantiates that the erosion control/revegetation plan has been implemented. Evidence includes photographs showing the project area vegetation and slopes.  
(0000207M)
12. **Protection of Sensitive Species.** Prior to and during construction of the dam and reservoir and initial filling of the reservoir, Permittee shall take the following actions to ensure that construction of the dam and reservoir and initial filling of the reservoir shall not harm California red-legged frog (*Rana aurora draytonii*), San Francisco garter snake (*Thamnophis sirtalis tetrataenia*), San Francisco dusky-footed wood rat (*Neotoma fuscipes annectens*), breeding birds and bats, and any other sensitive species present at or near the reservoir site:

- a) Hire a qualified biologist, acceptable to DFG and the U. S. Fish and Wildlife Service (USFWS) to:
    - i) Conduct a pre-construction biological survey of the construction site and surrounding environs to determine if sensitive species and/or their habitats may be present;
    - ii) Conduct a training session for construction field crews to inform them of the possible presence of sensitive species and their appearance, and to explain actions to be taken if they are encountered during construction of the reservoir;
    - iii) Monitor dam and reservoir construction and initial reservoir filling activities to ensure that harm to sensitive species encountered is avoided, and if it is determined that specific individual species encountered must be physically captured and relocated, ensure that such capture and relocation activities are performed only by a qualified collection biologist duly certified by the DFG and the USFWS; and
    - iv) Oversee the installation of a snake-proof fence, which shall surround the work and disturbance areas during dam and reservoir construction and initial filling of the reservoir. After consultation and concurrence with DFG and USFWS the Permittee shall submit the final design of the fence to the Division Chief for approval. The fence must conform to the most current design standards.
  - b) Stop all dam and reservoir construction activities if sensitive species are encountered and refrain from resuming construction activities until the biologist hired under part a) above declares that individual species encountered have either safely left the work area or have been safely removed and relocated by a qualified collection biologist duly certified by the DFG and the USFWS.
  - c) Submit quarterly progress reports to the Division Chief prepared by the biologist hired under part a) above, which summarize all measures taken to achieve full compliance with the requirements of parts a) and b) above. Such quarterly progress reports shall be submitted during the period beginning at least six months before initial dam and reservoir construction work is planned to commence until initial filling of the reservoir is completed.
13. **Sensitive Species Habitat.** For the protection of habitat for the California red-legged frog (*Rana aurora draytonii*), San Francisco garter snake (*Thamnophis sirtalis tetrataenia*), and other sensitive species occurring at or near the reservoir site, Permittee shall:
- a) Establish and maintain, undisturbed, a 150-foot wide strip of natural upland vegetation around the reservoir, except that a single, unpaved path no greater than ten feet wide may be maintained within this strip to allow access to the flow bypass facilities by a vehicle for normal operation and maintenance purposes. This path may be mowed as necessary to keep the path clear. Any vehicle/mower following the path shall not exceed a speed limit of 2 miles per hour, and personnel shall be posted at all times in front of the moving vehicle/mower to ensure that any snakes or frogs encountered on the path will not be harmed;
  - b) Consult with the USFWS, Sacramento Endangered Species Office, and DFG prior to commencing any reservoir dredging operations;
  - c) Refrain from disturbing the fringe of emergent (wetland) vegetation in the reservoir during dredging operations;
  - d) Make no introduction of non-native fish species into the reservoir;

- e) Refrain from disturbing the existing natural vegetation located within the wetland identified on the map (Attachment A) attached to this permit; and
- f) Consult with DFG, and/or the USFWS, should any bullfrogs (*Rana catesbeiana*) be discovered at or near the reservoir, to develop and implement an acceptable bullfrog eradication program. The eradication program may require periodic draining of the reservoir.

(0000205)

14. **Setback and Bypass.** For the protection of coho salmon (*Oncorhynchus kisutch*) and steelhead trout (*Oncorhynchus mykiss*) habitat in Bradley Creek, and for the protection of riparian or aquatic habitat of the San Francisco garter snake (*Thamnophis sirtalis tetrataenia*), California red-legged frog (*Rana aurora draytonii*), and other sensitive species occurring in or along the Shaw Gulch stream channel downstream of the reservoir, Permittee shall:

- a) Establish a setback of 25 feet along Shaw Gulch from the reservoir downstream to the Permittee's property line. The stream setback shall be measured from the top of the bank on both sides of the stream. No activity shall occur within the setback area, including, but not limited to, grading, roads, fencing, storage areas, and irrigation, with the exception of access roads. Permittee shall restrict cattle or other domestic stock access to the riparian area; and
- b) Bypass a minimum flow of 0.13 cubic feet per second (58 gallons per minute) or the natural stream flow; whichever is less, during the season of diversion.

(0140060M)

15. **Flow Bypass Compliance Plan.** Within six months of the issuance of this permit, Permittee shall submit a Compliance Plan for approval by the Division Chief that will demonstrate compliance with the flow bypass terms specified in this permit. The Compliance Plan shall include the following:

- a) A description of the physical facilities (i.e., outlet pipes, siphons, pipelines, bypass ditches, splitter boxes etc.) that will be constructed or have been constructed at the project site and will be used to bypass flow;
- b) A description of the gages and monitoring devices that will be installed or have been installed to measure stream flow and/or reservoir storage capacity;
- c) A time schedule for the installation of these facilities;
- d) A description of the frequency of data collection and the methods for recording bypass flows and storage levels; and
- e) An operation and maintenance plan that will be used to maintain all facilities in good condition.

The Permittee shall be responsible for all costs associated with developing the Compliance Plan, and installing and maintaining all flow bypass and monitoring facilities described in the Compliance Plan. The monitoring data shall be maintained by Permittee for ten years from the date of collection and made available to the Chief of the Division of Water Rights, upon request.

Any non-compliance with the terms of the permit shall be reported by Permittee promptly to the Division Chief.

Diversion and use of water prior to approval of the Compliance Plan and the installation of facilities specified in the Compliance Plan is not authorized.

(0000070)

16. **Riparian Water Use.** Permittee shall not use more water under the basis of riparian right on the place of use authorized by this permit than Permittee would have used absent the appropriation authorized by this permit. Based on the information in the Division's files, riparian water has not been used on the place of use. Therefore, consistent with this term, Permittee may not divert any additional riparian water for use on the place of use authorized by this permit under basis of riparian right. With the Chief of the Division's approval, this information may be updated, and Permittee may use water under basis of riparian on the authorized place of use, provided that Permittee submits reliable evidence to the Chief of the Division quantifying the amount of water that Permittee likely would have used under the basis of riparian right absent the appropriation authorized by this permit. The Chief of the Division is hereby authorized to approve or reject any proposal by Permittee to use water under the basis of riparian right on the place of use authorized by this permit.
- (0560300b)
17. **Cultural Resources Protection.** Should any buried archeological materials be uncovered during project activities, such activities shall cease within 100 feet of the find. Prehistoric archeological indicators include: obsidian and chert flakes and chipped stone tools; bedrock outcrops and boulders with mortar cups; ground stone implements (grinding slabs, mortars and pestles) and locally darkened midden soils containing some of the previously listed items plus fragments of bone and fire affected stones. Historic period site indicators generally include: fragments of glass, ceramic and metal objects; milled and split lumber; and structure and feature remains such as building foundations, privy pits, wells and dumps; and old trails. The Chief of the Division shall be notified of the discovery and a professional archeologist shall be retained by the Permittee to evaluate the find and recommend appropriate mitigation measures. Proposed mitigation measures shall be submitted to the Chief of the Division for approval. Project-related activities shall not resume within 100 feet of the find until all approved mitigation measures have been completed to the satisfaction of the Chief of the Division.
- (0000215)
18. **Water Quality Requirements.** Prior to any construction activities on Shaw Gulch, Permittee shall contact the California Regional Water Quality Control Board, San Francisco Bay Region. If required by the Regional Board, Permittee shall comply with requirements of the National Pollution Discharge Elimination System (NPDES) Storm Water Discharge Permitting Program or any other applicable water quality control program under the Regional Board's jurisdiction.
- (0000100M)

**ALL PERMITS ISSUED BY THE STATE WATER RESOURCES CONTROL BOARD ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:**

- A. The amount authorized for appropriation may be reduced in the license if investigation warrants.
- (0000006)
- B. Progress reports shall be submitted promptly by Permittee when requested by the State Water Board until a license is issued.
- (0000010)
- C. Permittee shall allow representatives of the State Water Board and other parties, as may be authorized from time to time by said State Water Board, reasonable access to project works to determine compliance with the terms of this permit.
- (0000011)

- D. Pursuant to California Water Code sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of State Water Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the State Water Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of Permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the State Water Board also may be exercised by imposing further limitations on the diversion and use of water by the Permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest; and is necessary to preserve or restore the uses protected by the public trust.

(0000012)

- E. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Board if, after notice to the Permittee and an opportunity for hearing, the State Water Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the State Water Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

(0000013)

- F. This permit does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this water right, the Permittee shall obtain authorization for an incidental take prior to construction or operation of the project. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this permit.

(0000014)

- G. Permittee shall maintain records of the amount of water diverted and used to enable the State Water Board to determine the amount of water that has been applied to beneficial use pursuant to Water Code Section 1605.

(0000015)

- H. No work shall commence and no water shall be diverted, stored or used under this permit until a copy of a stream or lake alteration agreement between the State Department of Fish and Game (DFG) and the Permittee is filed with the Division. Compliance with the terms and conditions of the agreement is the responsibility of the Permittee. If a stream or lake agreement is not necessary for this permitted project, the Permittee shall provide the Division a copy of a waiver signed by the DFG.

(0000063)

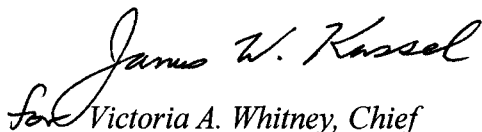
***This permit is issued and permittee takes it subject to the following provisions of the Water Code:***

Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

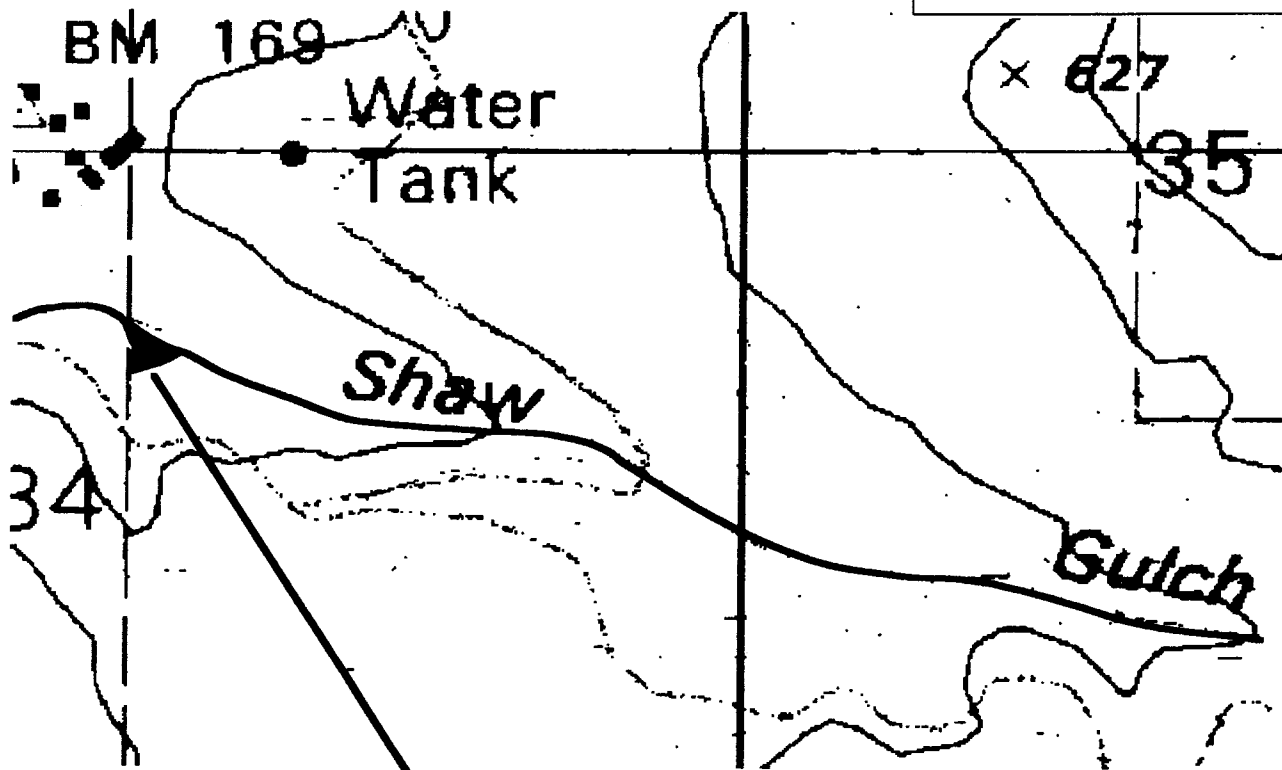
Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefore shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

**STATE WATER RESOURCES CONTROL BOARD**

  
Victoria A. Whitney, Chief  
Division of Water Rights

Dated: JAN 12 2006



Property Boundary

120ft

100ft.

Old Stream Channel

150ft.

New Stream Channel

Wetland Area  $\approx$  0.21 Acres

Not to Scale



**Plate IV. Description of Wetland**

KJELDSSEN BIOLOGICAL CONSULTING  
923 St Helena Ave Santa Rosa

**Jacobs Farms  
San Mateo County**